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**The penal implications of austerity: Italian punishment in the wake of the Eurozone crisis.**

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**Abstract**

The article discusses the implications of the Eurozone crisis for Italian penalty. It begins by analysing the 'politics of austerity' – the economic reforms and new political mode entrenched by the Eurozone crisis. It then reflects upon the penal implications of such changes, focusing on the conceptual links between state-citizen relations, political institutional arrangements, and punishment in Italy. The article argues that Italy will continue to display an alternation of punitiveness and moderation. However, the meaning and contours of both punitiveness and moderation are changing. Punitiveness is likely to be exacerbated, as punishment is used to impose cohesion on an ever more fragmented polity. Moderation, far from being a collective good and 'public philosophy', is likely to become a narrow, stratified and personalistic good. The article urges us to consider whether austerity may be engendering similar dynamics across other EU polities.

**Keywords**

Eurozone crisis, austerity, politics, Italy, punitiveness, moderation

**Introduction: punishment and crisis in Italy**

The Eurozone crisis has precipitated both economic and political changes in Italy, entrenching what can be called the 'politics of austerity'. In this article I address the implications of austerity for punishment. I do so by focusing on the connections between the political economy, political institutions and punishment, and the penal incentives created by the changes experienced since 2010. Political institutions, political economy and punishment can all be seen as facets of state-citizen relations. My article is thus inherently concerned with the changes wrought by austerity to state-citizen relations; how such changes have been effected at the level of institutions and political economy; and how they play out in the penal realm.

In terms of punishment I argue that, though Italy will continue to display an alternation between punitiveness and moderation (Gonnella, 2013; Gallo, 2015), as a consequence of the Eurozone

crisis the *meaning* and *contours* of punitiveness and moderation are changing. Punitiveness is likely to become more exasperated, with state punishment used as a means to impose cohesion on an ever more fragmented polity; moderation, far from being a collective good and ‘public philosophy’ (Loader, 2010), is likely to become a narrow, personalistic good.

Austerity politics have a European dimension, insofar as the changes experienced in Italy have been both *shaped* by its membership of the European Union, and have *reflected* changes occurring at the European level (within European institutions or across EU polities). Economic and institutional differences on the ground will necessarily mediate austerity politics, affecting how they do or do not take hold across different polities, and I am not arguing that the Eurozone crisis spells political economic or penal convergence in Europe. However I *am* arguing that, taking our cue from the Italian case study, we can understand the penal incentives that austerity may be creating. Consequently, though this article focuses on Italy, its lessons can be applied more broadly.

After a brief account of its theoretical ambitions, this article proceeds in three sections: section one gives an outline of ‘pre-crisis’ Italy, its penalty and its political economy. Section two analyses the significant changes that have occurred since 2010: at the economic level, it appears that sites of resistance to ‘liberalisation’ may have broken down; at the political level, it appears that a new ‘mode’ of policy-making may have taken hold, characterised by executive discretion, and used to push through austerity policies. These changes raise two main questions: what penal incentives are created by a political economy shaped by austerity? What penal incentives are created by a political system shot through with executive discretion? Section three answers these questions: it provides theoretical conclusions on Italian punishment in times of crisis, focusing on the conceptual links between political institutional arrangements and punishment (Lacey and Soskice, 2015; Barker, 2009; Lacey 2008). It also engages with materialist analyses of punishment, exploring their predictions for Italian penalty in times of austerity and explaining how political economic reforms may be engendering the potential for penal escalation. My method borrows from Lacey (2008) and I therefore offer a political institutionalist approach to the political economy of punishment: one that treats the political economy as rooted in particular institutions, which produce divergence on the basis of comparative advantage (Hall and Soskice, 2001).

My article ultimately reinforces the claims made by the comparative political economy of punishment that penal escalation is not inevitable but is anchored to particular institutional

configurations and, by implication, their reform. However, I place greater emphasis than Lacey does on political variables (veto-points, electoral systems, sites of negotiation). This reflects the specificity of the Italian context: a political economy that lacks obvious systemic coherence, and a penalty more visibly tied to politics (Gallo, 2015). Section three also explores *political* changes in Italy, analysing how these changes run the risk of weakening state norms, and of increasing the appeal of informal norms for those narrowing categories of individuals capable of tapping into them. This dynamic simultaneously incentivizes a punitive state reaction, and the narrowing of moderation as informal diversion from state punishment.

#### *Terminology and theoretical ambitions*

My analysis is weighted towards Italian politics and economy rather than penal reform per se, given that my aim is to provide a theoretical framework capable of accounting for the *penal incentives* – the tendency to exclude deviants or to re-integrate them – engendered by economic and institutional reforms. When discussing Italian ‘penalty’ I use the term primarily to refer to the likelihood of the State deploying formal coercion against its citizens, and the likelihood of citizens calling upon formal state coercion as a means to resolve social conflict. Of the processes that produce incarceration, it is these – citizens’ normative allegiance and the State’s normative claims – that I am most interested in, though they do not exhaust the process of punishment in any given context. I use incarceration rates as a partial proxy for the interplay of citizen demands for, and state delivery of, punishment.

In discussing the possible penal incentives created by austerity politics, I set out a future research agenda that invites us to track how the ‘politics of austerity’ *do or do not* manifest themselves in actual practices of punishment. In so doing, I leave open the possibility that austerity politics may not have immediately visible effects on penal reforms in Italy. However, I contend that austerity remains relevant to our consideration of Italian penalty as a whole, insofar as the changes it has wrought raise questions about citizens’ economic and political integration into the polity, their consequent exposure to the social and economic exclusion that correlates with penal exclusion, and their allegiance to state norms. I follow the line of scholarship that investigates the link between the state of contemporary Western democracies and their modes of punishment (Lacey, 2008; Barker, 2009; Ramsay, 2012; Miller 2016). I add to this literature by explicitly investigating the question of

democracy and punishment in the context of the Euro crisis, focusing on Italy but inviting us to reflect on the broader implications of austerity politics for state-citizen relations and punishment.

### **Pre-crisis Italy: punishment, politics, and economics**

#### *Italian penalty*

In terms of both punishment and political economy, Italy can be described as a ‘hybrid’. From the perspective of punishment, this means that the nation is simultaneously punitive *and* moderate (Gallo 2015; also Gonnella 2013; Corda, 2016: 112, though note Corda’s characterisation of Italy as more obviously ‘punitive’). As is typical – though not uncontested (Solivetti, 2010) – in the literature on contemporary punishment, punitiveness and moderation are here gauged by incarceration rates, with punitiveness represented by high and increasing incarceration; and moderation by incarceration either stable or decreasing. My choice falls on this indicator given its character as the visible imposition of state coercion on deviants (Barker, 2009: 14).

Since the 1970s Italian incarceration rates have experienced a background increase (Gallo, 2015: 600), which has been particularly marked since the 1990s (Corda, 2016: 161, Scandurra, 2017: 2). However, Italy has also routinely enacted decarceration measures: clemency provisions and, more recently, measures directed at reducing prison numbers by reducing pre-trial incarceration. This has produced an oscillation in incarceration rates, an expression of Italy’s ‘penal dualism’ (Gallo, 2015). This dualism is further encapsulated by Italy’s Prison Acts (1975 and 1986) geared to the ‘re-education’ of deviants, but simultaneously willing to withhold ‘re-education’ when in the presence of particular offender categories – typically organised criminals and political terrorists (Pavarini, 1994; Corda, 2016: 144). Italy’s penal dualism is also captured in Massimo Pavarini’s distinction between ‘primary’ and ‘secondary’ criminalisation: laws that are draconian in the books (primary criminalisation) but softened in their application (secondary criminalisation - see also Corda, 2016: 114).

This softening of the laws can be conceptually reconnected to Italy’s tension between formal and informal social controls (Melossi, 2001), with the latter still relied upon by citizens as a source of conflict resolution (for a contrast from ‘Anglo-American’ punitiveness see Garland, 2001; 2013). Insofar as informal conflict resolution is limited to those able to tap into the sources of informal norms (Gallo, 2015: 608; Corda, 2016: 163) – kinship networks for example – this particular expression of

Italy's penal dualism maps onto a further line of differentiation: moderation is more obviously available to Italian citizens than it is to (especially non-EU) migrants, who often suffer the brunt of Italy's formal social controls including incarceration (Melossi, 2015). In sum: Italy is a penal hybrid, displaying punitiveness *and* moderation, both of which are differentially distributed.

*Italy and the comparative political economy of punishment*

Contemporary penal analyses have attempted to account for Western penal evolution and divergence, by tethering punishment to the political economy. 'Macroscopic' approaches have argued that increasing incarceration and a harsher approach to punishment – hallmarks of contemporary 'punitiveness' – are the logical articulation of 'post-Fordism' (De Giorgi, 2006; 2010) and 'neoliberalism' (Wacquant, 2009). By contrast, comparative accounts have emphasized how political economic differences can explain penal differences. Thus Lacey distinguishes between liberal market economies – LMEs – and co-ordinated market economies – CMEs (2008; Hall and Soskice 2001). LMEs are typically premised on a higher worker turnover and limited welfare protection; they tend to produce conditions of labour surplus (2008, 59) and therefore incentivise penal exclusion (of this surplus) in the face of deviance. CMEs are typically premised on long-term investment in labour, and relatively high levels of welfare protection (58-59); they sustain labour scarcity and this incentivises the re-integration of deviants into economy and society.

In this materialist context Italy is again a hybrid: its political economy is internally diversified (Crouch, 2005; Trigilia and Burroni, 2009); it is a 'mixed-market economy' (Molina and Rhodes, 2007) that sits uneasily alongside the more coherent LMEs and CMEs. Italy's hybridity has persisted over time and, though the Italian political economy did experience changes between 1970 – the beginning of 'post-Fordism' – and 2010 – the start of the Euro crisis – these changes did not reconfigure Italy as either an LME or a CME, making it difficult to trace a simple link between the Italian political economy and Italian punishment.

It is the permeable nature of Italian political institutions, and the multiplicity of veto-points available for different social and political actors to influence policy, that have prevented any coherent political economic model from emerging in Italy. Italy's post-war institutional system is typically premised on negotiation and consensus. This feature also has implications for punishment, as negotiation between different institutional actors can forestall the spread of economic and social

policies thought to precipitate penal escalation. Negotiation between institutional actors (politicians, policymakers, stakeholders, the judiciary) can also provide a level of resistance to ‘punitive law and order ideology’ (Lacey, 2013: 274; Lijphart, 2012: 291-292). As the coming sections show, the economic and political reforms ushered in since the Euro crisis have upset Italy’s structures of negotiation and consensus, with implications for the penal incentives sustained by both Italy’s political economy and institutional arrangements.

### Italy in times of crisis

#### *The Italian economy*

The contemporary Italian economy has not been thriving (Culpepper, 2014: 1270): as in other Western capitalist nations ‘growth remains anaemic, as do labour markets’ (Streeck, 2014: 48). Italian labour data support this picture, with unemployment rates increasing from 2004 to 2014 (table 1) and with ‘labour market flows [suggesting] a deterioration of labour participation with a transition to inactivity, probably due to long unemployment spells’ (Fana et al., 2016: 83). Moreover, according to a 2015 survey only 41 per cent of those in employment considered their job to be ‘secure’, with 57 per cent defining their job as either ‘flexible’, ‘temporary’ or ‘precarious’ (a 5 per cent increase since 2013; Dimanti et al, 2015). Given Italy’s extensive informal economy (Regini, 1997) employment data are only a partial indicator of economic security in Italy. Yet, to the extent that informal labour *is* informal, it is less endowed with legal protections and formal welfare entitlements. Thus, even if we posit that transition into unemployment marks a possible transition into informal labour, this can be a buffer, but not a complete solution to (growing) labour precariousness (De Giorgi, 2006).

Table 1: Unemployment rate in Italy 2004-2016

	12.2004	12.2008	12.2012	12.2014	03.2016
Unemployment rate (%) 15-64 years	7.9	6.7	11.4	12.4	11.7
Unemployment rate (%) 15-24 years	24	26.6	38.4	41.2	36.7

Source: ISTAT.<sup>1</sup>

In 2011, a technocratic government was nominated in Italy, ‘at the depths of the eurozone crisis [...] when Italy’s cost of borrowing on international markets had reached unsustainable levels’ (Culpepper, 2014: 1264), and the nation was subject to speculative attacks on the back of its high public sector deficit (Scharpf, 2014: 24). The government was headed by Mario Monti, erstwhile EU commissioner; it replaced the executive headed by Silvio Berlusconi, who was ‘widely judged as incapable of saving Italy from bankruptcy and the eurozone from the break-up’ that might have followed (Culpepper, 2014: 1264). Culpepper defines Monti’s executive as ‘a group of neoliberal reformers’, interested in developing austerity policy *autonomously* – that is, without political parties and social partners – and who legitimised their reforms ‘by reference [only] to economic constraints or international commitments’ (2014: 1267). These constraints and commitments partly derive from Italy’s membership of the Eurozone, and from the latter’s nature as a ‘non-optimal currency area’ (Scharpf 2014): an economic area where policies are centralized, but have differential impact across its different regions. Policies implemented in the Eurozone have tended to be premised on an economic model that suits the German political economy, given its weight in the Eurozone (Carlin, 2013: 492), but that poses difficulties for other members, including the so-called ‘periphery countries’ such as Italy (512). For example, the adoption of a ‘balanced budget rule’ is ‘consistent with [German] institutional arrangements’ (512) but may not be consistent with the institutional arrangements of other EU nations, for which Euro-rescue policies such as fiscal austerity have in fact deepened the economic crisis (Scharpf 2014, 24-25). Eurozone constraints have played a key role in the evolution of politics and economic policy in crisis-Italy, not least because of the sanctioning procedures that accompany non-compliance with EU requirements for structural reform.

The economic reforms undertaken in Italy since 2011 have tended towards deregulation, flexibility and reduced welfare provision (Fana, et al. 2016: 82). Notable examples include pension reform,<sup>2</sup> but also labour reforms contained in the so-called ‘Jobs Act’,<sup>3</sup> which was introduced by the centre-left executive under then Prime Minister Matteo Renzi. Renzi was ‘the young and media-savvy Mayor of Florence who won the leadership elections for the Democratic Party [PD]’ in 2013 (Bickerton and Invernizzi Accetti, 2014: 23). He became Prime Minister in 2014, having been tasked with the creation of a new executive following the resignation of the erstwhile PD Prime Minister Enrico Letta.



The Jobs Act passed under Renzi's executive is thought to have '[established] a deep change in industrial relations via a substantial reduction of workers' protection' (Fana et al., 2016: 8279). For example, fixed-term contracts have been reformed in a manner that has made them 'cheaper for firms' (Treu, 2015: 84).<sup>4</sup> There has been a shift towards *shorter* forms of temporary employment, with 'the share of [...] contracts [lasting] between one and six months [representing] almost 40 [per cent] of temporary employment in 2015' (Fana et al., 2016: 82).

The 'Jobs Act' has also changed permanent contracts by converting them to a single contractual form with so-called 'incremental protection'.<sup>5</sup> Applicable to all those employed as of early 2015, this type of employment sees a change to pre-existing rules on unfair dismissal. Until this latest bout of reforms, it had been possible for unfairly dismissed workers to be *re-integrated* within the workplace.<sup>6</sup> Re-integration is now no longer available where workers are dismissed for 'economic' reasons – including the firm's failure or restructuring – and is limited in the presence of unjustified 'disciplinary' dismissals. Re-integration persists as a default only for discriminatory dismissals.<sup>7</sup> Where other forms of dismissal are judged 'unfair', the employee is entitled to damages (Treu 2015). Here we see a re-distribution of the burdens of unemployment from employers to employees.

Such labour market reforms have been characterised as an attempt to introduce 'flexicurity' to the Italian labour market.<sup>8</sup> However, Lorenzo Zoppoli (2015) has argued that the Jobs Act, and previous reforms,<sup>9</sup> have not visibly contributed to increasing social security. They have in fact primarily increased flexibility, and 'a precarisation of labour relations' (Prospero, 2015: 280). We can see this trend reflected in the increased use of work 'vouchers'. Akin to German 'mini-jobs', vouchers are 'hourly tickets [...] introduced in 2003 but implemented only since 2008', used to compensate workers up to a maximum of €7000 (Fana, et al., 2015). The opposition provoked by their extensive use, and a scheduled popular referendum on the issue, led to their abolition, but similar instruments were re-introduced in a bid to bypass an unfavourable referendum result. Opposition to vouchers has arisen given their *nature* – no social security rights attached, but only a minimal contribution to old age pension – and their *marked increase* – with 536 000 ca. sold in 2008 to 91 867 000 ca. sold in 2015 (*ibid.*), as the legal limits on their use were progressively reduced.<sup>10</sup>

Questions remain as to how recent reforms will play out across Italy's 'political economies' (Bagnasco, 1977; Crouch 2005). However, overall the Italian economy appears to have moved towards further de-regulation and flexibility, with a shift to low-skill, low-technology jobs. This shift has been

particularly marked over the last 7 years, raising questions about the penal incentives created by the type of economic changes that materialist analyses typically link to penal escalation (De Giorgi, 2006; Wacquant, 2009; Lacey, 2008).

*Italy and Europe: the politics of austerity and executive politics*

Italian economic reforms have occurred, at least in part, under pressure from the European Union. Recommendation 2.6.2014 of the European Council, for example, enumerated ‘priorities, methodology [...] even deadlines’ for future economic changes in Italy (Zoppoli, 2015). If we consider this European dimension to Italian economic reforms, it should come as no surprise that they have tended to incentivize liberalization and flexibility, as the reforms are informed by the ‘politics of austerity’ that are being promulgated across European Member States. As Dawson and De Witte contend, the Eurozone crisis has been dealt with by legally entrenching austerity ‘over alternative policy options’ (2013: 826). This is partly the result of the integration of monetary and fiscal policy that has rendered it ‘necessary to integrate and reform labour and welfare policies’ across member states (824-826). Legal entrenchment, in the Italian case, includes the introduction of the so-called ‘Fiscal Compact’ within the Constitution.<sup>11</sup> The State, public administration, and local authorities are now all committed to a balanced budget, a limited State deficit, and to limiting public debt. This commitment clearly constrains available economic policy choices.

The last four Italian executives have demonstrated high ideological continuity with the austerity agenda. Austerity and fiscal responsibility were the prime mandate for Monti’s technocratic government (2011-2013). Similarly, Renzi ‘made clear that he would as leader uphold all of Italy’s commitments to the European Union’, including budget discipline (Bickerton and Invernizzi Accetti, 2014: 85; Prospero, 2015: 256-257, 280). It is also important to point out how the economic reforms implemented since 2011, mark a *change* relative to pre-crisis Italy. Though they can be conceptually connected to a shift towards deregulation that began in an earlier era (Fana, et al., 2016),<sup>12</sup> the reforms have been judged as unprecedented in their ‘breadth and radicalism’ (Prospero 2015, 274). This is so even compared to the right-wing executive headed by Berlusconi (2008-2011), that had, despite its rhetoric, a ‘limited social and economic reform record’ (Bickerton and Invernizzi Accetti, 2014: 23; Schmidt and Gualmini, 2013: 367). Note again the influence of international constraints on Italian policy: ‘the commitment to “save the euro” at any cost’ (Scharpf, 2014: 25) has led to the imposition of

fiscal austerity across the Eurozone, while the initial evolution of the crisis, including the speculative attacks against Italy, fostered the perception that there was no alternative to austerity (Culpepper, 2014: 1269).

What is significant about ‘crisis Italy’ is not just the reformed economy, but also that it has experienced a significant shift in the *political mode* with which such economic reforms have been undertaken. Two particular features of this political mode stand out: the *increase in executive power* and the *decrease in mediation between interests* within the policy-making process (Culpepper, 2014). These are relevant, in an analysis of punishment, insofar as changes in a polity’s capacity to pursue negotiation and consensus in decision-making, are thought to impact upon penalty by influencing relevant policy choices, and general trust levels within the political community (Lacey, 2008; Barker, 2009; Lacey and Pickard, 2015a: 235-236).

Contemporary Italian politics display an emphasis on the speed and decisiveness of reform. These came to a head in the politics of the executive led by Renzi, who himself ‘[adheres] to what Ilvo Diamanti has described as ‘the ideology of Doing’ (Bickerton and Invernizzi Accetti, 2014: 26; Diamanti, 2010). The cornerstone of this ideology is ‘that one is capable of “Doing”’ such that ‘it doesn’t matter *what* one does, only that one *can* do it’ (Bickerton and Invernizzi Accetti 2014, 26). The logical corollary to this ideology is intolerance towards any ‘needless fetters on the efficacy of executive action’, which include ‘the party system itself and the administrative structures of the state’ (*ibid.*). Parliament has become one such ‘fetter’, standing in the way of reform: ‘parliamentary discussion can be a stimulus [...] but it cannot upset the [aims] we have given ourselves’ (Renzi, in Cazzullo, last accessed 03 May 2016). Renzi has since discovered that some resistance may come from *other* institutional players and processes, most recently referenda and the Italian Constitutional Court (see below).

If this focus on executive decision is not exclusive to Renzi he operationalised it as few other politicians in Italy’s post-war history. According to Prospero, Renzi’s political project is premised on ‘disintermediation to the death’ (2015, 39, author’s translation). This evaluation is echoed by Diamanti, who refers to Renzi’s ‘institutional strategy’ as one intent on creating an ‘immediate and personal democracy [...] resistant to “mediation” and [...] “mediators”’ (quoted in Prospero, 2015, 39, author’s translation). Parties and parliament, but also trade unions, are amongst the ‘mediating’ forces that are being circumvented (D’Anna, 2014: 112; Diamanti et al., 2015; Prospero, 2015: 281).

This circumvention has a distinct institutional articulation: Renzi's executive relied upon political practices that allowed it to cut through levels of negotiation, making - for example - extensive use of confidence votes. Confidence votes allow executives to bypass layers of wrangling and negotiation over a particular legislative proposal, by forcing a decision, no longer on the substantive policy issue, but on the solidity of the executive (Lazar, 2013: 321). Recently this tool has been employed with great ease: 66 confidence votes between February 2014 and December 2016, amounting to 27 per cent of all laws passed during this period, including the 'Jobs Act' and the 2015 budgetary law (*legge di stabilità*). These figures are bested by Monti's technocratic executive, which relied on confidence votes for 45% of the laws passed during its term (11-2011 to 04-2013).<sup>13</sup>

Other practices have also been employed in order to 'expedite' the legislative procedure, including the so-called 'kangaroo' and 'super-kangaroo'. The 'kangaroo' sees proposed amendments being 'grouped' so that, once *one* legislative amendment is rejected, *all* analogous amendments are automatically rejected with it (Fantauzzi, 2015; Treccani-Vocabolario).<sup>14</sup> The 'super-kangaroo' sees one single preliminary amendment re-write the whole reform, and thereby collapse all other existing amendments (Treccani-Vocabolario).<sup>15</sup> Both practices are informal, though not strictly illegitimate, means employed to 'jump' layers of filibustering.

Italy's recent political leadership has thus been described as *decisionist* (D'Anna, 2014: 112) in its emphasis on decisive executive action rendered valid by its *being* decisive. Such 'decisive executive action' has been deployed to push through a 'technocratic' economic agenda (Bickerton and Invernizzi Accetti, 2014: 26; Prospero, 2015: 256-257). With this mix of decisionism and technocracy in the interest of austerity, the Italian executive – certainly under Renzi, and possibly under his successor Paolo Gentiloni – reflects political changes that have been experienced at the European level. The response to the Euro crisis has been marked by a tendency 'to shift EU policy-making towards a model of executive politics', within the European institutions (Dawson and De Witte, 2013: 832), and at a time when the EU has begun making policy decisions with 'distributional consequences' (White, 2015: 589). In parallel we have witnessed increasing power for national, member state, executives relative to national parliaments (Dawson and De Witte, 2013: 817-818, 834). Similarly, as White notes, within member states we are seeing 'significant displays of executive *discretion*' accompanied by a subversion of 'the institutional routines designed to enable contestation, including parliamentary timetables and debates [...] repeatedly sidestepped or compressed, [with the] legitimacy of dissenting

opinion questioned especially, but not only, in the Mediterranean countries'. Such 'subversions' and 'discretion' are rationalised by reference to the crisis, and they constitute one articulation of what White calls 'emergency rule' (2015: 589-590).

We know from analyses of punishment and politics that policy volatility has tended to correlate with penal volatility and upward punitive swings. By contrast, integration and interdependence of institutional actors has tended to sustain penal stability and informal social controls (Lacey, 2008). Italy's new political mode – with its European influences – thus raises the issue of the possible penal implications of a politics premised on unfettered executive decision-making.

#### *Volatile executive politics*

Prior to the crisis, the Italian institutional set-up could be described as a 'volatile political equilibrium'. Italy's permeable institutional structure absorbed and magnified the constant political conflict around which the nation is organised (Lazar, 2013: 321; Pavarini, 1994: 52) that reflects the presence of various interest groups competing for decision-making power. The mode of reform that could be expected in such a system was slow-pace, incremental, with some policy stagnation and with policy often deviating from its original intention (Diamanti, 2001: 4-5; Lange and Regini, 2010: 12 & 267). This slow, negotiated change could give way to more immediate reform when problems came to a head and required speedy resolution, for example via the use of confidence votes (Lazar, 2013: 321).

The mix of constant conflict, negotiation, and short-term policy acceleration produced a *volatile political equilibrium*. The *volatility* followed from the constancy of conflict, and particularly by the possibility of short-term ruptures. The system was nonetheless in *equilibrium* because the interests in conflict co-existed in a relationship of interdependence, with no particular interest group – such as employers or employees – emerging as victorious (Molina and Rhodes, 2007: 241). The equilibrium lay also in the fact that, even after short-term ruptures occurred, the Italian system had a tendency to 're-set', and for change to be altered or reversed (Bull and Rhodes, 2009: 6): 'individuals and groups whose interests [seemed affected, displayed the capacity] to resist changes through evasion or [...] subsequent changes in policy or implementation' (Bull and Rhodes, 2009: 6; Lange and Regini, 2010: 254-255). The continuous wrangling continued, and reform returned to being slow and incremental.

More recently, the capacity for diverse interests to impact upon decision-making appears to have been reduced. Informal institutional practices such as kangaroos, super-kangaroos, and the increased use confidence votes, have been employed in an intentional bid to *bypass* conflict, seen as an ‘unnecessary fetter’ to executive decisions. I argue that if such a political mode persists it may disrupt Italy’s ‘volatile equilibrium’ changing its policy-making process and the range of interests incorporated within it. The ‘equilibrium’ lies in the alternation of wrangling and rupture; yet we have been witnessing far more ‘rupture’. This leaves the system prey to increasing ‘volatility’ – constant conflict with reduced opportunities for consensual resolution. This hypothesis finds support in Prospero’s analysis of leader-driven politics in contemporary Italy, which ‘introduces high levels of unpredictability [and] improvisation at the crucial junctures’ of the political realm (2015: 156). Prospero’s claim parallels White’s observation on the EU response to the Euro crisis, characterised by widespread ‘[e]xceptionalism and improvisation’ (2015: 586).

When faced with this apparent disruption of Italy’s volatile equilibrium, we then need to ask – as a gateway to asking about punishment – whether the political changes witnessed since 2010 are likely to have long-term political effects. On the one hand we find Italy’s capacity to resist change (Bull and Rhodes, 2009: 6; Lange and Regini, 2010: 254-255). Yet we also need to consider White’s argument that ‘extraordinary measures’ taken by political executives ‘faced with what they designate as an emergency’ may in fact have a significant legacy, at least in terms of ‘the later authority of the political community’s norms’ (2015: 585). The recent Italian political mode may thus persist, notwithstanding that the ‘acute’ period of crisis is over. There is also the fact that efforts were made to *entrench* the political mode, not just by changes in customary parliamentary procedure, but also by attempted institutional reform. For example: Italy’s 2015 electoral law had a strongly majoritarian vocation, and was designed to dissuade coalition formation.<sup>16</sup> Its rationale appeared to be that of ensuring government stability by forcing a majority (D’Anna, 2014: 109).

The electoral law was challenged by the Constitutional Court ruling of January 2017, and has since been reformed,<sup>17</sup> yielding a mixed system where the majority of seats are assigned by proportional representation. This suggests a persistent institutional capacity to mediate change and executive decisionism, here stymieing the shift to a majoritarian electoral system. Similarly, recent economic and institutional reforms may in future be modified, including in their application. Does this indicate that Italy is impervious to change (whatever the nature of this change)? I argue that we cannot

yet conclude that the modification of recent reforms will simply be a return to a situation where ‘the “new” looks remarkably like the “old”’ (Bull and Rhodes, 2009: 6). I suggest that since the Euro crisis, the interests capable of subverting or modifying reforms – those interests that typically ‘evade’ change, or ‘demand’ its reversal (Lange and Regini, 2010: 254-255) – are now likely to be different in number (how many) and possibly also in composition (who). The questions for the future therefore seem to be: which interests will prevail within Italy’s contemporary institutional context? Which interests will be able to exploit Italy’s veto-points? With what implications for punishment?

### **Crisis and punishment: on the future of Italian penalty**

In this final section I develop some theoretical conclusions on Italian penalty. What follows is intended as a framework that can guide future research on Italian punishment as the effects of the crisis become clearer.

#### *Political economy and punishment*

In terms of the political economy of punishment, the outlook is not reassuring. Italy seems to have embarked upon a route of increasing de-regulation, flexibility, and reduction of welfare support. This does not mean Italy will now become a fully-fledged LME, not least because of its continuing territorial diversity. However we have witnessed a rupture of at least some of those ‘protective’ features capable of providing citizens with insulation from economic exclusion and its penal consequences. Think here of Italy’s narrowing protection against unfair dismissal, where monetary compensation has supplanted re-integration; or of the increasing use of short-term labour. These are the types of changes that penal analyses – whether premised on global political economic change, or on comparing different national and regional welfare regimes, or on different ‘varieties of capitalism’ – all correlate with penal escalation. In Italy, as more people fall between the cracks of the economy, more will potentially be exposed to the criminal justice system: as the poor increase in number (De Lauso and Nanni, 2015: 25), so do those who are punished where we ‘punish the poor’ (Wacquant, 2009).

Do we therefore face Italy’s inevitable descent into the penal dystopia of macroscopic materialist accounts? I argue that it is premature to give in to this analytical fatalism. The key point is that *such changes are linked to a particular political moment; to a particular political mode; and to specific institutional changes*. We have, in my portrait of Italy, a portrait of specific labour reforms that

lead to deregulation, flexibility and so forth. More significantly we see the *institutional means* used to spearhead such changes: the increased use of confidence votes; the informal means used to circumvent parliamentary opposition; the attempted reforms designed to restrict the space for confrontation and compromise. Here lies the institutional anchoring of Italy's economic shift.

As we reduce the potential for multiple interests to be heard, as the diffusion of veto-points is curtailed, then it is the strongest interests that are heard. Dawson and De Witte observe that 'when redistributive policies are discussed in such "thin" political systems as the EU, weaker interests are often overlooked, with a [...] bias tending to emerge towards more mobile, richer and integrated interests (which is a shorthand for capital and markets)' (2013, 827). I would argue that, similarly, if we institutionalise the means to overlook weaker interests at the national level, the more 'mobile, richer and integrated' interests will prevail. These may well be 'capital and markets', and indeed we find strong hints of this in Prospero's account of contemporary Italy, with Monti's and Renzi's executives characterised as conduits for Italy's 'powerful interests' (Prospero 2010, 304) including the employers' association (*Confindustria*) whose 'recipe' is being adopted to address the crisis (Prospero: 2010, 35).

If this analysis does not bode well, it nonetheless avoids the type of desperation implicit in the global-level theories advanced by De Giorgi (2006), or indeed Wacquant (2009). This is because, though Italy looks to be losing sites of resistance to the spreading of 'market logic', *things might yet have been different* (and they might be yet). Historical contingencies are crucial here, and it is significant that these institutional changes have been wrought at a time of crisis, in the interest of advancing austerity politics. This is the crucial conjuncture: engineered executive discretion in the interest of austerity. We should thus resist conclusions on the inevitability of penal escalation, and focus instead on the specific mechanisms that produce both economic liberalisation and their penal translation (Lacey, 2008), and so retain some agency over penal developments.<sup>18</sup>

Moreover, though the institutional entrenchment of austerity seems to have created the potential for increasing penal expansion, I argue that in Italy we will continue to see an unequal distribution of punishment. There are insiders and there are outsiders (Lacey, 2008), and there will continue to be insiders and outsiders, though the lines between the two categories may become even starker, particularly where migrants are concerned (Fabini, 2017). It is also important to remember that all is not economic rationality in Italy (De Cecco, 2009; Molina and Rhodes, 2006), so the 'insider' and 'outsider' categories are unlikely to simply reflect economic dynamics. The 'powerful interests' that



Prospero refers to include, but are not totally contiguous with, a neo-liberal ‘capitalist class’: they may be more traditional ‘political’ interests, which may therefore continue to engage in such ‘economically inefficient’ practices as patronage and corruption (Trento, 2012: 447; Della Porta et al, 2015). Where it is accompanied by relevant political belonging, formal economic exclusion is therefore unlikely to *directly* translate into punishment in Italy: formal economic exclusion may mask informal economic integration, for example in a political clientele, further implying the availability of informal norms for the resolution of social conflict. We will consequently need to track how austerity politics play out across Italy’s multiple political economies – including the informal – noting their effects on the distribution of punishment throughout the nation.

*Penal reforms, institutional changes and changing penal incentives*

Having explored the political economic implications of austerity politics in Italy, I now turn to the relationship between punishment and political institutions, to investigate the short- and long-term penal incentives generated by austerity.

In the short-term, austerity has been capable of stimulating a pragmatic form of moderation, where ‘the case for [penal] parsimony can be pressed with a Treasury-mindset [given that] prisons are a scarce and expensive public resource that need to be used sparingly’ (Loader, 2010: 354). Recent reforms undertaken in Italy on pre-trial remand in custody, which aim to reduce the prison population (Borrelli, 2015: 2) and achieve a speedier resolution of the early phases of the criminal trial (Canzio, 2014), can be seen as partly motivated by such fiscal concerns (Corda, 2016: 160). Admittedly, the need to decarcerate springs also from Italy’s international commitments, the European Court of Human Rights having demanded, in a 2013 judgement, that Italy reduce its prison population in order to comply with its human rights obligations (*Torreggiani v Italy*; Gallo, 2015: 606-607; Corda, 2016: 157-161). Reforms were accordingly passed that affected pre-trial remand as a key source of overcrowding. In 2014 pre-trial custody was reduced by prohibiting custody in prison where the judge (*giudice della libertà*) ‘evaluates that the defendant will [eventually] receive a suspended sentence or a short sentence’ (Gallo, 2015: 606). Judicial discretion in the selection of precautionary measures has been limited further by imposing a duty upon the judge to motivate not just the need for such measures, but also why incarceration was chosen at all (Borrelli, 2015: 3).

Insofar as fewer detainees and faster trials cost less than more detainees and longer trials, such reforms can be seen to also satisfy fiscal objectives. This decarceration by short-term, expedient measures betrays a type of moderation that is *pragmatic* (Gallo 2015, 608; Corda, 2016: 162), and is now also overlaid with fiscal concerns. Pragmatic moderation, however, may have a short lease of life: insofar as it is pragmatic, it is more susceptible to short-term contingency, and where it responds to political expediency (Maiello, 1997) it may also *fall* at the behest of political expediency, particularly in times of political volatility (Gonnella, 2017: 4). Pragmatic moderation also risks skirting the borders of leniency if, for example, it is *too obviously* the product of political expediency. It then raises the spectre of impunity rather than moderation as a considered reaction to deviance. This will, at best, reduce long-term support for moderation but may, at worst, act as ‘a red-rag-to-a-bull’ (Loader 2010, 345), producing demands for more, rather than less, punishment.

Looking more specifically at the period after *Torreggiani*, it is also interesting to note the persistence of contradictory impulses in Italian penalty. For one, the impetus towards decarceration incentivised by *Torreggiani* seems to have slowed down, with rates again creeping upwards, to reach 90 detainees per 100’000 in 2016 (the rate had dropped from a peak of 112 in 2010, to 88 in 2014 - World Prison Brief, last accessed January 2018).<sup>19</sup> One of the suggested reasons for this increase is that a – time-limited – provision that ‘boosted existing schemes of early release’ (Corda, 2016: 110), has elapsed without being renewed (Scandurra, 2017: 6).

Of note is also a 2017 reform that increases the minimum sentences for burglary, mugging, and robbery.<sup>20</sup> All minimum sentences are set to 3 years or above, and public commentators have argued that, though the nominal justification for such sentence hikes is proportionality, the covert motivation is to ensure that offenders do not have access to custodial alternatives. This would be a bid to out-do political forces on the right (Anastasia and Manconi, 2015). Commentators also predict that, with the new sentences, Italy might face an increase in incarceration and a return to overcrowding (Scandurra, 2017). The increase in minimum sentences needs to be read alongside the 2014 reform of pre-trial custody, which established that the judge cannot remand the defendant to prison unless she evaluates that they will eventually receive a sentence *exceeding the 3-year mark*.<sup>21</sup> An increase in minimum sentences for aggravated property offences, logically also increases the *predicted* sentence-length, and therefore the likelihood of offenders being remanded to custody. The sentence reforms thus

*co-exist* with recent provisions designed to decarcerate, revealing the persistence of contradictory short-term impulses in the Italian penal system.

However, my interest in this article is less in the short-term changes in penal legislation as it is in the broader, longer-term penal incentives engendered by austerity politics: specifically in terms of state-citizen relations, citizens' inclusion in the polity, and citizens' mutual trust and interdependence. In the long-term, the outlook is even less reassuring. Here I build on Lacey and Pickard (2015a; 2015b) and their concept of 'associational value' (AV). Associational value is a term relevant to group relations, and is: 'the value which can be expected to derive from future interactions [between an aggressor and other members of her group]' (Lacey and Pickard, 2015a: 234). It is 'indicated by factors such as kinship, capacity for work or other forms of social productivity [...] and mutually interdependent and benefit-conferring relations' (Lacey and Pickard, 2015b: 681-682). It relates to punishment insofar as high associational value will '[enhance] the orientation to forgiveness and reconciliation' (2015a: 234), as members of the group are incentivized to repair those relations threatened by aggression, and the disruption caused by deviance, rather than rupture them further by retaliation. High AV can therefore be seen to incentivize penal moderation, defined here as an attitude to punishment that privileges a parsimonious use of coercive power (233-234), and the re-integration of offenders within economy and society.

Associational value is itself connected to nations' institutional organisation and political economy, insofar as the latter help to 'institutionalise the collective expectation that associational value between citizens will – and ought to be – higher and widespread' (236). Thus, generous welfare provisions reinforce the idea that group members have inherent worth, such that they will be provided for in times of need, and not excluded from their society and political community. Similarly, political economies premised on long-term investment in their members (such as CMEs), imbue the latter with a value that is projected into the future. Returning to materialist terminology we could say that labour scarcity corresponds to high associational value - where scarcity is both a feature of individuals with high AV and is sustained by high AV. Labour surplus corresponds instead to low AV - the 'surplus' nature both expressing and contributing to low AV.

Associational value is also sustained by political systems that rest upon 'stability and group cohesion' (236): those where the political process relies on, and maintains, interdependence. The key example here is a system premised on proportional representation, by contrast to 'countries with highly

competitive, first-past-the-post systems, where policy horizons tend to be relatively short term and [...] volatile' (236). Insofar as AV is connected to nations' institutional organisation and political economy, we would expect changes to politics and economy – such as the ones that have occurred in Italy – to also impact upon levels of AV.

How does Italy in crisis fare on this count? To the extent that economic reforms acquire more typically 'liberal' features, they are unlikely to enhance associational value. Likewise, a political mode that is explicitly premised on 'disintermediation' serves as both an institutional crystallization and a symbolic reminder that compromise is not valued, but is a barrier to a speedy realization of a political vision that is increasingly volatile. Social and political cohesion are unlikely to be bolstered within a system where the inevitable expression of political conflict is perceived of as a nuisance, or an act of hostility, and therefore excised rather than brought into a system that is open to multiple, and interdependent voices. I argue that, with a radically reduced space for negotiation, trust and expectations of long-term interdependence are likewise going to be reduced, with a consequent narrowing of the scope for reconciliation in the face of deviance. The narrowing by design of the scope for negotiation and consensus thus threatens moderation taking hold as 'public philosophy': as a normative ideal to be pursued, and [...] an articulated and socially legitimate understanding of why and whom and how, and how much' a society punishes, with a particular emphasis on 'restraint, parsimony and dignity' (Loader, 2010, 351).<sup>22</sup>

However, we do not yet face full-scale penal escalation in Italy. This is partly because economic and political changes are still in their infancy; it is also because some form of moderation follows in Italy from informal social controls (Melossi 2003). Tethered to 'intermediate normative orders' (Gallo, 2015; Pizzorno, 1992; Pizzorno, 1997: esp 340; Romano, 1946) – broadly speaking political institutions situated between state and citizens and mediating between the two – these informal controls can act as a check on deviance, and incentivize informal conflict resolution. They produce what has been called 'de facto moderation' (Gallo, 2015): a moderation that may not necessarily be deliberate, but that is an inevitable corollary of the intermediate orders and their informal norms, which are relied on – *in lieu* of state norms – to address deviance (note the contrast with Loader's notion of 'public philosophy'). Examples of such intermediate orders include the Church, or a well-rooted family, or even economic units. Thus, Italy's small and medium sized enterprises, typically organised in local networks (Trigilia and Burrioni 2009, p. 644), have tended to be regulated by personal trust,

community ties and, in the past, ideological belonging (Reyneri 1987). A conflict or ‘an aggression’ within this context is likely to be met with reconciliation rather than rupture, in the interest of maintaining the viability of the economic unit. Order is likely to be restored by means of the informal, personal, community or kinship-based norms that already structure interactions within the enterprises.

How viable is Italy’s ‘de facto moderation’ for the future? I argue that its remit is likely to narrow over time: it is likely to become more *personalistic* because premised less on institutionalised politics, and more on personal relations. Informal social controls are also less likely to be of the ‘virtuous’ kind: less premised on inclusion in groups with high civic commitment (Barker, 2009), and more premised on inclusion within groups that are inward-looking and impermeable to outsiders (Gallo 2015, 612). Group membership in this context looks less like party membership, or inclusion in the formal labour market, and more like family ties or clientelism. Associational value, far from being produced within institutions that sustain public, political engagement and investment in citizens *qua* citizens, will therefore be produced by narrower, more personal groups. Rather than it being produced by institutional arrangements that express ‘at the level of the polity, an *analogue* of the kinship relationship at the interpersonal level’ (Lacey and Pickard 2015a, 237, emphasis added), it will continue to be produced by *actual* kinship relations, or by relations otherwise unified by interpersonal ties. As opinion polls suggest, Italian citizens are aware of the narrowing of these categories of belonging. When, in a survey (Demos coop), interviewees were asked ‘who safeguards workers’ interests?’ 36 per cent answered ‘the family’. Second to the family was ‘no one’ (19 per cent) with only 16 per cent answering ‘trade unions’, and 4 per cent answering ‘the state’. As far as family and trade unions are concerned, the data show an *inversion* of past trends: in 2004, 30 per cent of respondents had answered ‘trade unions’, against 10 per cent answering ‘the family’, and it is only *after* 2011 that the latter gains the upper hand (Diamanti et al, 2015).

What are the penal implications of this narrowing of associational value? If associational value in Italy is increasingly limited to normative orders unified by personal ties, the ‘likelihood and [the] viability of adopting’ reconciliation (Lacey and Pickard 2015a, 234) to hostility, which follows from associational value, will likewise be limited to relations unified by personal ties. I argue that the current spate of reforms has exacerbated this phenomenon: by curtailing formal, accepted loci of mediation, it has privileged existing forms of personalistic mediation. In such a revised economic and institutional context, there are fewer incentives to sustain moderation as a collective good. Rather,

incentives will tend to be in favour of moderation perceived of as a scarce good, accessible through interpersonal ties, even linked to leniency (Loader, 2010: 345) where moderation is premised on inclusion within the type of groups – patronage or corruption networks (Nelken, 2010; Della Porta et al, 2015) – that skirt illegality.

*Questions of normativity, questioning normativity*

If I am right, the scenario I have drawn also has implications for authority and normativity in Italy: to put it bluntly, the authority of the Italian state and its norms is likely to be weakened. The Italian state is one that historically suffers from high internal contestation and limited ‘ritual power’ over citizens (Agnew, 2002: 58). As we witness the contemporary restriction of those spaces in which State and citizen can interact on neutral, participative terms, we are likely to see a further weakening of state authority and norms. The latter will be weakened relative to the authority and norms of those privatistic/private orders that persist in Italy and that still allow citizens, for better or worse, to negotiate or bypass state norms.<sup>23</sup>

For the better-connected citizens the weakening of state authority will come from the increasing realization that alternative sources of authority are more likely to ensure a ‘good life’. To use a sympathetic example: it is not through labour legislation that unfairly dismissed workers will achieve re-integration into the formal economy, but some may still be able to re-enter the labour market through family connections.<sup>24</sup> By contrast, those who are not so well connected – those who have nothing but their naked legal identity to rely on, and who belong to no alternative order – may then come to question state norms because of their unequal application. To date, the most obvious demographic cohort to face such exclusion are non-EU migrants, more often subject to the full rigour of legal norms (regardless of how negotiable they may be for citizens: Melossi, 2003, 382; Solivetti 2012: 153-154). Indeed harshness against ‘outsiders’ serves as a symbol of state proactivity against the pervasive violation of state norms (Fabini, 2017); demands for such harshness also serve as a neutralisation technique for citizens’ increasing distance from legal norms (Melossi, 2003). We may thus witness increased citizen demands for stricter enforcement of laws against migrants, who still emerge in public opinion surveys as a source of fear for Italian citizens (Demos & pi 2017a).<sup>25</sup>

However, it is not just migrants who may in future be exposed to the social and economic exclusion that correlates with penal exclusion. As time passes and generations change, the inter-

generational support provided by families headed by relatively wealthy older individuals will decrease. Consequently more and more (now younger) citizens will find themselves bereft of the additional political belonging capable of padding the thinning relationship with the state (De Lauso and Nanni, 2015: 16).

That recent Italian reforms have been introduced as part of the Eurozone crisis and its ‘emergency rule’ (White, 2015), may further contribute to weaken the purchase of state norms in Italy. This is because ‘emergency rule increases political uncertainty’ by casting doubt on the procedural legitimacy of norms, their intended duration, and the extent and manner of their enforcement (White, 2015: 607). As executive discretion increases we find that ‘the rule of persons is seen to displace the rule of norms’ (*ibid*: 601). I argue that this analysis applies equally to the political and economic reforms introduced in Italy under the aegis of the Euro crisis and in the interest of ‘doing’. The current political mode in fact compounds the pre-existing personalization of norms in Italy, and further weakens the purchase of ‘neutral’ state rules. This is especially so where executive discretion is employed to modify key areas of a polity’s life, such as economic policy, or the rules regulating political participation.

White offers an analysis of the implications of emergency rule for compliance with state norms: ‘compliance will be selective, in some areas non-existent, and a self-reinforcing process of decay will set in’ (*ibid*: 604). This quote reflects dynamics that *already* exist in Italy. These dynamics are of direct relevance to the issue of punishment insofar as they address questions of compliance with state law and state reaction to deviance. One such dynamic is that of ‘widespread illegality’ or Italy’s ‘traditional practices of moderate but pervasive violations of the law’ (Melossi, 2001: 382; Nelken, 2014: 282; Pavarini, 1994: 50), typified by informal labour and tax evasion, generally tolerated by the population, including Italy’s political elite (Ruggiero, 2010). I argue that widespread illegality is likely to increase if the legitimacy of state norms weakens: ‘compliance will be selective, in some areas non-existent’ (White, 2015). Faced with increasing threat to its authority, the Italian state may then increasingly react, as it is typically does, by using the penal law to try and force compliance<sup>26</sup> and to impose homogeneity on a heterogeneous, conflictual polity (Urbinati, 2014).

Here are the roots of Italy’s continuing alternation between moderation and punitiveness: *de facto* moderation following from a tolerated circumvention of state norms, and punitiveness from the state’s attempt to ensure such norms are respected. However, there may now be a difference, as this

split between punitiveness and moderation becomes more exasperated. In crisis-Italy the potential for the repressive aspects of state punishment sharpens. And moderation is not an articulated public philosophy, but marks citizens' abandonment of state norms, and the State's pragmatic bid to respond both to exogenous – including fiscal – pressures to decarcerate, and to its citizens' increasing 'widespread illegality'.

### **Conclusions: the penal implications of austerity**

In this article I have been discussing the penal implications of the 'politics of austerity' in Italy. I have used the expression to describe both the economic changes ushered in by the Eurozone crisis, and the political changes that have accompanied economic reform. I have formulated some theoretical conclusions on the possible effects that austerity politics will have on Italy's oscillation between punitiveness and moderation. In so doing I have adopted the framework of institutionalist political economic analyses of punishment, those that correlate political economic shifts to penal variation looking at the penal incentives created and sustained across different institutional set-ups.

My focus has been primarily on political institutions and political processes. This reflects both the particular character of Italian penalty – where punishment and politics are visibly linked – and my interest in state-citizen relations. Political institutions and political processes are key tools with which citizens are included, or excluded, from a given polity, and thus through which citizens' normative allegiance to the state is constructed. They are also key tools in the creation and support of trust and interdependence among citizens. Normative allegiance, trust, interdependence, all feed into the penal incentives present within a given polity: the likelihood of (State and citizens) relying on formal coercion and penal exclusion rather than informal conflict resolution and re-integration.

From this theoretical vantage point it appears that 'the politics of austerity' may have changed Italian punishment. I argue that punitiveness and moderation continue to exist in Italy, and we therefore do not witness straightforward alignment with monolithic penal models. However, if current trends continue unabated, punitiveness is likely to become more exasperated and moderation narrower, with both becoming more stratified.<sup>27</sup>

The changing meaning and contours of punitiveness and moderation follow from the modified nature of both the Italian political economy and Italian politics (its new political *mode*). At the economic level, austerity has brought greater deregulation and precariousness: features that typically



correlate with increasing punitiveness and carceral containment of the poor. At the political level, we have seen a willed desire to reduce spaces for negotiation and consensus. In the long-term, this may reduce Italy's capacity to produce 'associational value' for its citizens, and consequently its capacity to sustain incentives for reconciliatory approaches to deviance. Associational value is now likely to be the preserve of pre-existing 'normative orders' unified by personalistic ties, rather than being available to all state (legal) citizens. The contours of moderation are shifting: it is becoming more stratified and scarcer, rather than being a collective good. I argue that this shift has negative long-term implications for Italy's ability to sustain a moderate approach to punishment, longer-term than the incentives for more pragmatic types of moderation we have seen in recent years.

The willed reduction of sites for negotiation and consensus also exacerbates punitiveness: it shifts people towards privatistic orders and away from the public order; towards privatistic norms and away from state norms. It incentivises 'widespread illegality' and is an ulterior manifestation of the 'distance' between state and citizens (Mair, 2013), historically present in Italy but now compounded by a new political mode premised on executive decision-making. The Italian State may well meet this distance with repression: with punishment as a way to force cohesion.

Future research will have to track the persistence of austerity politics in Italy, and their translation at the penal level. Moreover, to the extent that the politics of austerity in Italy express, and are reflected in, changes occurring at the European level, future research should also engage with the broader question of whether austerity has similar implications across European polities.

## **Notes**

<sup>1</sup> At <http://www.istat.it/it/archivio/185464> (last accessed 03 May 2016).

<sup>2</sup> L. 92/2012.

<sup>3</sup> L. 183/2014.

<sup>4</sup> Decreto Legge 34/2014, converted into L.78/2014.

<sup>5</sup> L. 183/2014, art 7[c].

<sup>6</sup> L. 300/1970, art 18.

<sup>7</sup> L. 183/2014.

<sup>8</sup> The European Commission defines flexicurity as ‘ an integrated strategy for [simultaneously] enhancing [...] flexibility and security in the labour market’ (at

<http://ec.europa.eu/social/main.jsp?catId=102>, last accessed 01 September 2015)

<sup>9</sup> Contractual reforms introduced in 2003 and labour reforms introduced in 2012.

<sup>10</sup> This partly reflects the use of vouchers to cover up informal labour.

<sup>11</sup> For a definition of ‘Fiscal Compact’ see:

[http://ec.europa.eu/economy\\_finance/articles/governance/2012-03-14\\_six\\_pack\\_en.htm](http://ec.europa.eu/economy_finance/articles/governance/2012-03-14_six_pack_en.htm)

<sup>12</sup> See L. 30/2003

<sup>13</sup> Berlusconi’s last executive (05/2008 – 11/2011) asked for confidence on 16% of all laws approved. Enrico Letta (04/2013 – 02/2014) relied on confidence votes for 28% of laws approved. By April 2017, Gentiloni’s executive had relied on confidence votes for 50% of its laws (Associazione-Openpolis, 2016).

<sup>14</sup> The kangaroo was used to vote on Italian constitutional reform, since rejected by a popular referendum.

<sup>15</sup> The super-kangaroo was used to approve electoral reform, since modified.

<sup>16</sup> L. 52/2015, Art 1(1)(f).

<sup>17</sup> L. 165/2017

<sup>18</sup> The question is also one of political ideology and opportunity and a European political class strong enough, and willing, to buck the trend of austerity politics.

<sup>19</sup> The pre-trial/remand population rate displays a similar trend: 49 in 2010; 29 in 2015; 34 in 2017 (World Prison Brief).

<sup>20</sup> L. 103/2017

<sup>21</sup> Art. 275 comma 2-bis, penal procedural code, modified by D.L. 92/2014.

<sup>22</sup> Interesting, though as of yet embryonic, developments are occurring here on the prison reform front.

<sup>23</sup> For a UK-based account of how contested political authority produces reliance on personal forms of normativity see Koch (2017).

<sup>24</sup> What is required is a well-rooted family, capable of mobilizing people and resources in support of its members.

<sup>25</sup> 46% of interviewees agreed with the statement that ‘migrants are a danger to public order and people’s safety’ (31% in 2010; 26% in 2012). This is by contrast to more general concerns where 76%

of interviewees was frequently concerned with ‘global insecurity’ – a category including the environment, food safety, war and globalisation – 63% by ‘economic insecurity’ and only then – 41% – by insecurity linked to crime (Demos & pi 2017b, author’s translation).

<sup>26</sup> For accounts of how changes in the State’s capacity to command political authority may produce a reliance on punishment see Ramsay (2012); Loader (2008).

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